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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1966

No. 439

SAILORS, *Appellant*,

*v.*

BOARD OF EDUCATION OF KENT COUNTY, *Appellee*.

No. 491

BOARD OF SUPERVISORS OF SUFFOLK COUNTY, NEW YORK, *et al.*, *Appellants*,

*v.*

I. WILLIAM BIANCHI, JR., *et al.*, *Appellees*.

No. 624

MOODY, *Appellant*,

*v.*

FLOWERS, *Appellee*.

No. 724

DUSCH, *Appellant*,

*v.*

DAVIS, *Appellee*.

## BRIEF OF COUNTY OF NASSAU AS AMICUS CURIAE

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## BRIEF OF COUNTY OF NASSAU AS AMICUS CURIAE

### Statement

**A. Interest of Nassau County.**

Issues of vital concern to Nassau County, New York are raised in these actions concerning (1) the applicability to local legislative bodies of the principle of "one-man, one-vote" enunciated by this Court in *Reynolds* v. *Sims* and companion cases, and (2) the constitutionality in the *Bianchi* case of a permanent scheme of weighted voting for the legislative body on the county level. On the issue of weighted voting, Nassau County has a particularly sub-

stantial interest since its Board of Supervisors, the County's legislative body, has operated under a weighted voting system since 1938. No other local legislative body has utilized this device on a permanent basis or has shared this unique experience for such a long period.

In the interest of fair and effective representation on the county level for the 1,400,000 residents of Nassau County, Eugene H. Nickerson, as County Executive and Chairman of the Board of Supervisors, has directed the County Attorney, as the County's authorized law officer, to sponsor this brief in these cases in behalf of the County of Nassau.

**B. Position of Nassau County.**

It is the position of Nassau County that the sound constitutional principle enunciated in *Reynolds*, requiring districts of substantially equal population to achieve fair and effective representation for all citizens on the state level, applies with equal force to local governing bodies elected from districts, such as county boards and city councils.

Weighted voting authorized by the federal district court in *Bianchi* is not deemed to be an appropriate permanent device and doubt is raised as to its constitutional validity.

Insofar as the jurisdictional question is concerned, it is the view of Nassau County that the three-judge court was properly convened in the *Bianchi* case.

## Introduction

The emergence of the county as the dominant, basic and most common unit of local government in New York State is nowhere better illustrated than in the case of both Nassau and Suffolk Counties. Long antedating the present concern for strong county government to deal with rapidly

increasing areas of county responsibility, Nassau County adopted a charter form of government in 1936 (L. 1936, ch. 879) providing for a county executive and permitting more effective methods for coping with constantly increasing demands being made on county governments. Nassau County was the first charter county in New York State and one of the first in the United States.

Suffolk County adopted its charter in 1958 (L. 1958, ch. 278) in its program to modernize its local government in order to deal more effectively with its rapid population expansion and attendant problems of suburbanization and urbanization.

Nassau County, with a population in 1960 of 1,300,171 (a population larger than fifteen states according to 1960 census figures), and Suffolk County with a population of 666,784 in 1960, are obviously significant and substantial units of local government. Moreover, counties generally throughout the state "have been an integral part of New York's governmental structure since early colonial times, and the many functions performed by the counties today reflect both the historic gravitation toward the county as the central unit of political activity and the realistic fact that the county is usually the most efficient and practical unit for carrying out many governmental programs." *WMCA, Inc.* v. *Lomenzo, et al.*, 377 U.S. 633, 761-62 (1964) (dissenting opinion).

At issue here, therefore, is whether the constitutional principle that requires a state legislature to be apportioned on a population basis to achieve fair and effective representation for all citizens should be extended to governing bodies of local government.

**I. A three-judge court was properly convened in the Bianchi case to decide the constitutional validity of statutory provisions having general statewide application.**

The jurisdiction of the three-judge court that was convened to hear the *Bianchi* case and had retained jurisdiction and held many hearings during the past five years has been questioned. See Memorandum of the Solicitor General in support of the Petition for a Writ of Certiorari in *Avery* v. *Midland County, Texas, et al.*, No. 958, October Term 1966.

There is no disagreement with the Solicitor General's statement of the applicable law that the convening of a three-judge court is authorized "only when a State statute of general, state-wide application is challenged and sought to be enjoined" but is not proper "where only a local ordinance or a State statute of limited application" is involved. Memorandum of Solicitor General, *supra* at pp. 3-4. But the Solicitor General errs when he suggests that the constitutional challenge in this case is limited to a state statute of only limited application.

The composition of the Suffolk County Board of Supervisors provided by section 201 of the Suffolk County Charter (L. 1958, ch. 278) is an almost exact reenactment of, and in fact superseded, section 150 of the County Law, indisputably a statute of general state-wide application.

Section 201 of the Suffolk County Charter provides:

> "The supervisors of the several towns of the county, when lawfully convened, shall constitute the board of supervisors of the county."

Section 150 of the County Law, from which the Suffolk County Charter provision was derived, provides:

> "The supervisors of the several cities and towns in each county, when lawfully convened, shall constitute the board of supervisors of the county."

The only distinction between the two provisions is that the County Law provides for representation of cities on the board of supervisors. Since Suffolk County has no cities, no provision for representation from cities was made in its charter. The Suffolk Charter did not, therefore, effect any change in the manner in which members of the board of supervisors are composed. Thus, before and after the adoption of its charter, the Suffolk Board of Supervisors consisted of one supervisor from each of its ten towns, notwithstanding the substantial variations in the population of the towns. Each town elects one supervisor, as provided by section 20 of the Town Law, applicable to all towns throughout the state.*

At the time the three-judge court was convened in the *Bianchi* case in 1962, all of the fifty-seven counties in New York State, not including the five counties comprising the City of New York, utilized the identical method of selecting members of their boards of supervisors, either in compliance with the County Law in fifty-one counties or the charter law of the six counties that had at that time adopted a charter form of county government.** The charters of each of the six counties continued the same method of selecting members of the board of supervisors as that provided by the County Law.

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* The Town of Hempstead (with a population of 728,625 in 1960) is represented by two supervisors on the Nassau County Board of Supervisors by virtue of section 41 of the Town Law.

** Of the 57 counties selecting members of their boards of supervisors in the same manner as provided by section 150 of the County Law, the only county then *not* providing for an equal vote for each supervisor was Nassau County, which since 1938 has used a weighted voting system. See County Government Law of Nassau County, §104 (L. 1936, ch. 879). Pursuant to section 203 of the Suffolk Charter, each supervisor has one vote; section 153(4) of the County Law provides that action of the board of supervisors shall be taken by the affirmative vote of a majority of the total membership of the board.

The County Law is, of course, a statute of general state-wide application; the composition of the boards of supervisors of at least 50 counties in the state was governed thereby at the time the three-judge court was convened. In addition, the then six charter counties, including Suffolk, utilized the very same method prescribed by the County Law for selecting members of the boards.*

A determination that section 201 of the Suffolk County Charter is constitutionally invalid would result in the applicability to Suffolk County of section 150 of the County Law since section 103 of the Suffolk County Charter provides:

> "All special laws relating to Suffolk county and *all general laws of the state shall continue in full force and effect* except to the extent that such laws have been amended, modified or superseded in their application to Suffolk county by enactment and adoption of this charter." (Emphasis supplied.)

To the extent that a provision of the Suffolk Charter is invalidated, the County Law, as the general state law, would be substituted and continued in its place. In such event, it may be deemed that the invalid 1958 charter provision never effected a repeal or superseded the County Law which, prior to that time, gove[illegible] the manner in which the county board was compose[illegible] *e.g., Matter of Markland* v. *Scully*, 203 N.Y. 158, 166 [illegible]1) ("the section of the charter as it existed before t[illegible]mendment must be deemed to remain in force"); *People ex rel. Farrington* v. *Mensching*, 187 N.Y. 8, 22-3 (1907); *People ex rel. Smith*

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* Since the commencement of the *Bianchi* action, two other counties (Herkimer and Schenectady) have adopted charters, and nine others have adopted local legislation relating to apportionment of their county legislative body. These eleven counties now use a mode of selecting members of the county boards of supervisors or of allotting votes thereon which differs from that provided by the County Law.

v. *Schiellein*, 95 N.Y. 124, 131 (1884); McK. Statutes, §377. See also, *Norton* v *Shelby County*, 118 U.S. 425, 442 (1886).

Thus, if section 201 of the Suffolk Charter is deemed constitutionally invalid, then section 150 of the County Law must fall as well. Every county in New York State outside of New York City would thus be vitally affected.*

Inasmuch as section 201 of the Suffolk County Charter and section 150 of the County Law are not only virtually identical but also so highly interdependent, it must be concluded that at issue here is a law of general state-wide application. The practicality of this conclusion was recognized by the state courts when both section 201 of the Erie County Charter, a re-enactment of the County Law provisions concerning the selection of members of boards of supervisors, and section 150 of the County Law were declared constitutionally invalid. *Graham* v. *Board of Supervisors*, 18 N.Y.2d 672 (1966).

A clear distinction exists between the *Bianchi* case and *McMillan* v. *Wagner*, 239 F. Supp. 32 (S.D.N.Y. 1964), where the court properly found "that [the New York City] charter applies only to New York City. It is not a state statute of state-wide application." Similarly, *Griffin* v. *School Board of Prince Edward County*, 377 U.S. 218 (1964), concerned a situation unique to Prince Edward County. But here, section 201 of the Suffolk County Charter or virtually identical provisions applied, at the time this action was instituted, not to one but to all the 57 counties outside of New York City. Unlike *McMillan* and *Griffin*, at stake in the *Bianchi* case is a state-wide system of general application and not a situation of merely local importance unique only to a single city or a single county.

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* The extreme population variances existing in almost every county in the state is documented in tabular form in Weinstein, *The Effect of the Federal Reapportionment Decisions on Counties and Other Forms of Municipal Government*, 65 Colum. L. Rev. 21, 51-54 (1965).

## II. The principle of "one-man, one-vote" enunciated by this Court in Reynolds v. Sims applies to the governing bodies of counties and other local governments and requires that such bodies be apportioned substantially on a population basis.

The establishment by this Court of the doctrine of "one-man, one-vote" was a milestone in achieving "full and effective participation by all citizens" and "fair and effective representation for all citizens" in state government. *Reynolds* v. *Sims*, 377 U.S. 533, 565 (1964). No argument should be sustained which would deny the "inalienable right" to effective participation in the political processes to citizens of local governments that possess and exercise important and substantial legislative powers.

The federal and state courts, with almost unanimity, have unhesitatingly applied the *Reynolds* principles to county and city legislative bodies. *E. g.*, *Graham* v. *Board of Supervisors of Erie County*, 18 N.Y. 2d 672 (1966); *Seaman* v. *Fourdich*, 16 N.Y. 2d 94, (1965); *Brower* v. *Bronkema*, 377 Mich. 616 (1966); *Ellis* v. *Mayor and City Council of Baltimore*, 352 F. 2d 123 (4th Cir. 1965). The sole exception, *Avery* v. *Midland County, Texas*, 406 S.W. 2d 422, 426 (1966), was grounded on the determination that the "legislative functions [of the county commissioners court] are negligible"—a situation which, if true in Texas, is clearly not the case in New York State, where county legislative bodies have substantial legislative powers.

In New York State, it is the board of supervisors which exercises the legislative function in the county. The Suffolk County Charter provides, in section 201, that the board of supervisors "shall be the legislative and policy determining body of the county." Similarly, the Nassau County Charter, section 102, refers to the board of supervisors as "[t]he governing body of the county." That all county legislative bodies shall be elected by the people

is constitutionally mandated. "Every local government . . . shall have a legislative body elected by the people thereof." N. Y. Const., art. 9, §1(a).

County boards possess vast local law power to enact legislation of equal dignity with state laws. Since 1846, when the State Constitution was first amended to allow the Legislature to confer local law powers on county boards, efforts have been successful to expand the local legislative authority of the county boards to include more and more areas of public concern. See *e.g.*, L. 1875, ch. 482; N. Y. Const. art. 3, §27 (1894); N. Y. Const. art. 9, §4 (1938). At the present time, the county boards have extensive home rule powers and may adopt and amend local laws that relate to "its property, affairs or government" [N. Y. Const. art. 9, §2(c)(i)] as well as laws not so relating covering substantial subjects [*Id.* at §2(c)(ii)]. Although many of the home rule powers set forth in the State Constitution are self-enacting, the Legislature has adopted supplementary legislation enumerating the numerous areas in which county boards may legislate. See Municipal Home Rule Law, §10, subds. 1(i), 1(ii) (a) and (b). The authority of a county board of supervisors to oversee county business and affairs by ordinance and resolution is similarly extensive. See, *e.g.*, Article 5 of the County Law.

The significant power vested in the board of supervisors to adopt a charter form of county government subject to approval by the people [Municipal Home Rule Law, art. 4, §§33(1), 33(7)(b)] and the scope of the home rule powers permitted to be contained in such a charter or an amendment thereto [*Id.* at §§33(2), 33(3)] are an acknowledgment that the county is the central unit of local governmental activity. The Governor, in his message approving the then new County Charter Law (L. 1959, ch. 569) authorizing a charter form of government for all counties (subsequently superseded by substantially similar provisions in Article 4 of the Municipal Home Rule Law), stated that:

> "It is the intention of this new article to permit county home rule to be used as an instrument for the more efficient handling of the varying problems of different counties . . . or to assume powers which have been exclusively those of the state.
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> • • •
>
> "This legislation should enable counties to meet more effectively the ever-increasing demands that are being made on local government." McK. 1959 Session Laws of New York, 1753-54.*

The dynamic increase of services offered by Nassau County and its acceptance of governmental responsibility on the local level in diverse areas of public concern is illustrative of the substantial legislative powers vested in the county unit. As recent examples of the expanding spheres of activity engaged in, Nassau County has created by local law several new governmental departments to meet the diverse needs of the residents of the County, including, for example, the first County Commission on Human Rights in New York State (Local Law No. 5, 1963), a Department of Labor (Local Law No. 1, 1963) and a Department of Commerce and Industry (Local Law No. 1, 1964). Nassau County has also, by local law, placed all employees of the Sheriff's Office under civil service and eliminated the Sheriff as an elected officer with provision for his appointment by the County Executive (Local Law No. 14, 1965). The broad power of the county board is further typified by the scope of activities requiring local

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* Similarly, the increasing stature of county governments was recognized by the Attorney General of New York State when he stated that the County Charter Law "providing opportunity for the fundamental reorganization of county governments by county residents has given the county an even greater role to play in the social, economic and political life of modern New York." *WMCA, Inc. v. Lomenzo, et al.*, 377 U. S. 633, 763, M. 18 (1964) (citing Brief for Appellees Secretary of State and Attorney General, No. 20, 1963 Term, pp. 42-43).

legislative action, in order, for example, to provide for the acquisition of land for the establishment of parks, recreation areas and the constant expansion of the network of county roads and highways, to support an active county hospital facility, to provide substantial health and welfare services, to construct sewer facilities, to establish a county airport and to support cultural activities.

The size of county budgets similarly reflect the important role of the county unit. The board of supervisors has the power to approve the county budget which, for the current fiscal year, in Nassau County totalled $376,334,702.00, including $190,853,504.00 for general fund expenditures, and in Suffolk County totalled $113,181,400.00 including $87,255,635.00 for general fund purposes.

A board of supervisors in New York State is clearly a body with grave and important legislative functions and responsibilities and assumes in certain respects what may ordinarily be considered state powers.

To deny equal representation on the county governing body to all county residents and to permit the invidious discrimination inherent in the present apportionment scheme for county legislative bodies* is as much a violation of the Equal Protection Clause, with the attendant deprivation of the right of each citizen to his inalienable right to effective participation in the political processes on the local level, as it was on the state level prior to this Court's historic pronouncements. The rationale and principles enunciated in *Reynolds* and companion cases apply to the legislative bodies of local governments.

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* See Table of Representation on Boards of Supervisors in New York State in Weinstein, *The Effect of the Reapportionment Decisions on Counties and Other Forms of Municipal Government*, 65 Colum. L. Rev. 21, 51-54 (1965).

## III. A permanent scheme of weighted voting for a local legislative body is violative of the Equal Protection Clause of the Federal Constitution.

The constitutionality of weighted voting as a permanent scheme for equalizing voting power is of concern to Nassau County as its governing body has been operating under a weighted voting system since 1938. County Government Law of Nassau County, §104 (L. 1936, ch. 879). The issue is raised in the *Bianchi* case since a permanent weighted vote plan for the board of supervisors was authorized by the Federal District Court and adopted at the last general election.

The Nassau County Board of Supervisors consists of six members representing the three towns and two cities of the County. As apportioned pursuant to the 1960 census, the range of voting strength is from 31 weighted votes for each of the two supervisors from the Town of Hempstead, with a population of 728,625, to two votes each for the supervisors from the City of Long Beach, population 25,654, and the City of Glen Cove, population 22,752.

While "weighted voting may be useful in rare cases as a stopgap to comply with the constitutional mandate [for a fair apportionment] when there is no time for a proper apportionment" (Weinstein, *The Effect of the Federal Reapportionment Decisions on Counties & Other Forms of Municipal Government*, 65 Colum. L. Rev. 21, 46 [1965]), it is urged here that a permanent weighted voting system is not compatible with the constitutional requirements of the Equal Protection Clause prescribed in *Reynolds*. Nassau County's position on this issue is in accord with the conclusion reached by the courts of this state, including the Court of Appeals. See *Graham* v. *Board of Supervisors of Erie County*, 18 N.Y. 2d 672, 674 (1966), where the state's high court approved a weighted voting plan solely as a temporary measure:

> "Although weighted voting has inherent defects, it does provide more of the attributes of equal representation than the existing apportionment of

> the Erie County Board of Supervisors. This being so, we approve the weighted voting plan adopted by the board . . . *but solely as a temporary expedient.* The board is directed to draft a permanent plan based on the principle of 'one man, one vote.'" (Emphasis supplied.)

See also, *Morris* v. *Board of Supervisors of Herkimer Co.*, 50 M. 2d 969, 273 N.Y.S. 2d 453 (Sup. Ct. 1966); *Shilbury* v. *Board of Supervisors of Sullivan Co.*, 46 M. 2d 837, 260 N.Y.S. 2d 931, 937 (Sup. Ct. 1965), *aff'd*, 25 A.D. 2d 688, 267 N.Y.S. 2d 1022 (3rd Dept. 1966).

Indeed, the federal and state courts have, with almost no exception, deemed weighted voting intrinsically unconstitutional as a permanent device. See cases cited in Weinstein, *supra*, 65 Colum. L. Rev. 21, 42-44. See also, *WMCA, Inc.* v. *Lomenzo, et al.*, 238 F. Supp, 916, 923 (S.D.N.Y. 1965), *vacated as moot*, 384 U.S. 887 (1966). The independent judgment of the many courts that have considered and rejected permanent weighted voting plans for local legislative bodies reveals a basic aversion to the system, resulting to some extent from its unsuitability to our representative form of government.

The issue concerning a permanent apportionment scheme based on weighted voting is as much a matter of Fourteenth Amendment concern as was legislative districting in the state apportionment cases. In *Reynolds*, this Court stated that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise" (377 U.S. at 555) and that "malapportionment can, and has historically, run in various directions." 377 U.S. at 567. However and wherever malapportionment exists, it is constitutionally impermissible under the Equal Protection Clause. Sophisticated as well as obvious malapportionment schemes were

thus declared violative of the Equal Protection Clause. Weighted voting is an apportionment device which may be deemed to debase or dilute a citizen's vote.

Weighted voting is not a "political" or otherwise "non-justiciable" issue. As in *Baker* v. *Carr*, 369 U.S. 186, 209 (1962), the issue of weighted voting "neither rests upon nor implicates the Guaranty Clause and . . . its justiciability is therefore not foreclosed . . . ." No political question is involved because "it is the relationship between the judiciary and the coordinate branches of the Federal Government, and not the federal judiciary's relationship to the States which gives rise to the 'political question.'" *Id.* at 210. Involved here is the substantial question of whether an apportionment scheme based on weighted voting is violative of the Equal Protection Clause. While weighted voting has a certain surface simplicity which makes it attractive as a solution to attaining a fair apportionment, upon "careful judicial scrutiny" weighted voting emerges as a complex sophisticated uncertain device which may not permit attainment of the goal of "one-man, one-vote."

The constitutional defects of weighted voting are manifold. Basically, it fails to accomplish its purported objective of providing equality of voting power either on a theoretical or conceptional basis. See Banzhaf, *Weighted Voting Doesn't Work: A Mathematical Analysis*, 19 Rutgers L. Rev. 317 (1965); *Morris* v. *Board of Supervisors of Herkimer County*, 50 M.2d 929, 932, 273 N.Y.S. 2d 453, 456 (Sup. Ct. 1966). Moreover, "weighted voting presents serious operational . . . objections." Weinstein, *The Effect of the Federal Reapportionment Decisions on Counties & Other Forms of Municipal Government*, 65 Colum. L. Rev. 21, 45 (1965).

After an extensive computerized analysis undertaken pursuant to a grant from the National Municipal League and the Ford Foundation, it was concluded that "[i]n almost

all cases weighed voting does not do the one thing which both its supporters and opponents assume that it does: weighted voting does not allocate voting power among legislators in proportion to the population each represents because *voting power is not proportional to the number of votes a legislator may cast.*" Banzhaf, *supra*, at 318. (Emphasis in original.) The fallacy, frequently overlooked, is that the "more accurate" measure of a legislator's power is his ability "to affect the passage or defeat of a measure." *Ibid.*

The same computer-assisted analysis has led to the conclusion that "the Nassau County, New York, system of weighted voting is unconstitutional because half of the representatives have no power to affect legislative determinations . . . ." *Ibid.* "With all members present, only the three with the largest number of votes have any power to affect legislative outcomes. Any combination of two of the three will pass a measure and no measure will pass unless at least two of the three agree with it. No changes in the voting of any or all of the three smallest representatives will have anything other than a persuasive effect on the outcome of any proposal. They may as well stay home . . . ." *Id.* at 339. "Even in large bodies [such as the New Jersey Senate] there may be significant disparities, which may be magnified in the committees where so much of the legislative work is done." *Id.* at 340.

The unsuitability of weighted voting for Nassau County, the state's largest county outside of New York City, with a county board of only six members from three towns and two cities, representing 1,400,000 residents, has been demonstrated to apply to a similar extent to smaller counties with larger boards as well. An analysis made of a proposed weighted vote plan for Herkimer County, a rural county of under 70,000 population with twenty-one supervisors from a like number of towns, resulted in a similar conclusion to that reached for Nassau County:

"Weighted voting is not constitutionally acceptable as a permanent plan of reapportionment . . . . In this connection, with the consent of all counsel, a mathematical analysis was obtained by counsel for the Attorney General of New York from Mr. Banzhaf and clearly indicates the grave disparities which exist under weighted voting as proposed in Plan "B". For example, the Town of Newport has approximately ten percent (10%) less than the mean or unweighted average of the voting power based upon its population, but more than one hundred percent (100%) more voting power than the residents of the Town of Ohio. A voter in the Town of Manheim has a voting power over sixty percent (60%) greater than the average voter in Herkimer County and two hundred sixty percent (260%) more power in his vote than a citizen in the Town of Ohio. The seven representatives from the three largest communities, German Flatts, Herkimer and the City of Little Falls, cast, between them, 364, or well over half of the 673 total votes. *The other* 18 *members of the Board will be voices without impact or effect on legislation when these 7 representatives agree on any issue.* To plunge into a "mathematical quagmire", *Baker* v. *Carr,* 369 U.S. 186, 268, 82 S.Ct. 691, 7 L. Ed.2d 663 (1962) understood only by experts using computers, does not appear to this Court to be the path leading to equal representation of citizen voters in our local legislative bodies." *Morris* v. *Board of Supervisors of Herkimer Co.,* 50 M.2d 929, 932, 273 N.Y.S. 2d 453, 456 (Sup. Ct. 1965) (Emphasis supplied.)

Another constitutional infirmity of weighted voting is the practical operational effect of its implementation. Weighted voting will not resolve the inequality of representation that would result since so many important legis-

lative functions are not related to voting. As the court aptly noted, in *WMCA, Inc.* v. *Lomenzo, et al.*, 238 F. Supp. 916, 923 (S.D.N.Y. 1965), *vacated as moot*, 384 U.S. 877 (1966):

> "If voting were the only important function of a legislator, the scheme of fractional voting in Plans D and C would probably not offend "the basic standard of equality" among districts. But *legislators have numerous important functions that have nothing directly to do with voting*: participation in the work of legislative committees and party caucuses, debating on the floor of the legislature, discussing measures with other legislators and executive agencies, and the like. The Assemblyman who represents only one-sixth of a district can theoretically give each constituent six times as much representation in these respects as the Assemblyman who represents a full district. This disparity of representation persists even if the State is right in arguing that the Assemblyman with only one-sixth of a vote will carry only one-sixth as much political weight when he engages in these activities." (Emphasis supplied.)

Similarly, the Citizens' Committee on Reapportionment, in its report to the Governor, stated that:

> "If *Reynolds* requires equality of legislative representation, it seems clear that many aspects of the legislator's activity cannot be weighted, so that the device creates distortion rather than equality. *Speaking on the floor, committee membership, eligibility for committee chairmanship, and voting bills out of committee, for example, cannot be weighted.* A district entitled to two votes, for example, may well be entitled to two heads as well so that a dilution

of legislative representation ensues when only one head and two votes are granted." N.Y. Joint Legislative Committee on Reapportionment, Report, Leg. Doc. No. 76, p.36 (1964). (Emphasis supplied.)

But even if the problems of committee assignments* and voting could be solved, other difficulties inherent in a weighted voting system would still exist. "It gives rise to unlimited speculation as to committee appointments, the allotment of time in debate and the effect of the voices to be heard." *League of Nebraska Municipalities* v. *Marsh*, 209 F.Supp. 189, 195 (D.Neb. 1962). "Serious human and practical problems exist in a system of weighted voting which limits its usefulness on a permanent basis . . . . The question arises as to whether a legislator from Little Falls is permitted to make 9 times as many speeches, 9 times as many telephone calls and have 9 times as much patronage? When they serve on a committee together, does one legislator have 9 times as much power on that committee? If the weighted system is not followed on committee assignments then the disproportion which reapportionment seeks to correct is only partially corrected. If it is, meaningful representation by those who cast a small number of votes is lost. *Morris* v. *Board of Supervisors of Herkimer County*, 50 M.2d 929, 933, 273 N.Y.S. 2d 453, 456 (Sup. Ct. 1966).

However, no matter what procedures or rules are established in an attempt to minimize the defects of weighted voting, one uncontrovertible fact emerges. A district entitled to two or more votes and having but one man to cast them is under-represented. That one man cannot as effectively represent his constituency as would

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* Section 154 of the County Law, applicable to Suffolk County, provides that "The board of supervisors may create standing committees for the purpose of aiding and assisting the board in the transaction of its business . . . ."

two or more is clear. It is extremely doubtful that one legislator can make the same contacts, hold the same number of working committee assignments, meet the same number of constituents, influence and persuade other legislators or command the same attention as would two or more legislators.

Weighted voting is constitutionally impermissible as a permanent apportionment scheme because "[w]eighted voting tends . . . to represent districts rather than people in reality . . . ." Lockard, *Achieving Fair Representation in New Jersey*, 88 N.J.L.J. 1 (Jan. 7, 1965).

True representative government requires that "one-man, one-vote" apply within the legislative body itself. In this respect, it has been aptly stated that:

> "If we accept the democratic assumption that a body of equals with opportunity for free debate will generally reach a more favorable result than a body controlled by a single person who must, by hypothesis, be no better than the average, weighted voting will lead to less beneficial results than other forms of voting. The system is demeaning and frustrating to the able representative who is constantly overwhelmed by the voting power of a colleague whose influence and control are artificially increased."
>
> "*A deliberative democratic body—a legislature at its best—requires application of the concept of 'one-man, one vote' within the body itself, so that rational argument among equals can take place.* The attributes that make for leadership in such a body—honesty, preparation on issues, intelligence, ability to weave principle and practicality together, and dedicated interest in other members and in the work at hand—should determine individual weight within the body." Weinstein, *The Effect of the Federal*

*Reapportionment Decisions on Counties & Other Forms of Municipal Government*, 65 Colum. L. Rev. 21, 45-6 (1965) (Emphasis supplied.)

A majority of the bi-partisan Nassau County Commission on Governmental Revision, after five years of intensive study of the structure of Nassau County's government, concluded that:

> "But, entirely apart from the foregoing, weighted voting is not the equivalent of one man-one vote equal representation: it stifles the deliberative nature of the decision-making processes; it limits the effectiveness of the inter-change of persuasive debate; it places undue emphasis upon the individual supervisors, according their ideas significance related not to the quality of their ideas but to the weight of their vote. We believe that the deliberative, legislative and decision-making processes of the Board of Supervisors require that the relationship of its members towards one another be that of equals." Commission on Governmental Revision, *Final Report to the Board of Supervisors*, Dec. 12, 1966, p. 9.

A permanent weighted voting plan for a county legislative body does not comply with the standards of fair and equitable representation required by the Fourteenth Amendment. Thus, the principle and rationale of the federal court determination that a weighted or fractional voting plan for a state legislature "violates the XIV Amendment of the United States Constitution" (*WMCA, Inc.* v. *Lomenzo, et al.*, 238 F. Supp. 916, 923 [S.D.N.Y. 1965], *vacated as moot*, 384 U.S. 887 [1966]) should be applied to local legislative bodies. This conclusion is in accord with that reached by the New York Court of Appeals in *Graham* v. *Board of Supervisors of Erie County*, 18 N.Y. 2d 672 (1966).

## CONCLUSION

**For the foregoing reasons, the principle of "one-man, one-vote" should be held to apply to the governing body of local governments; weighted voting does not meet the requirements of the Equal Protection Clause and should be declared invalid as a permanent device.**

Respectfully submitted,

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